IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17077 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALJIBHAI HARIBHAI ROKAD

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 17077 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS PB SHETH AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 02/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India questioning an order of detention dated 25/09/03, passed by respondent no.1 herein, in exercise of the powers conferred on him u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that the petitioner was involved in a land grabbing case. It was also alleged against him that certain persons had purchased a private land bearing Land Survey No.118 situated in Rajkot Taluka of Rajkot District. It was also alleged that along with the said land, another government land bearing Survey No.352 was also mixed up and both the lands were sold as private land Survey No.118. That the petitioner was involved in the aforesaid transaction stating that it was a private land bearing Survey No.118 and thereby, sold government land bearing Survey No.352 and was guilty of land grabbing. Therefore, the detaining authority found that it was a fit case to detain the petitioner with a view to prevent him from carrying on the said activity of land grabbing. An order of detention was therefore passed by the detaining authority on 25/09/03.

3. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended that the order has been passed after a long lapse of time and that there is no probability of any threat to public order. That though the matter involved more than two persons, the Advisory Board had recommended release of three persons, whereas the petitioner in this petition and the petitioner of S.C.A.No.17077/2003, have been continued under detention. That though the case of these two petitioners was on par with those three persons, equal treatment has not been extended to the two petitioners and even on merits, there was no land grabbing by the petitioner, so as to attract the provisions of the said Act. That, even otherwise, civil and criminal proceedings are pending in the Courts and therefore, there was no likelihood of any threat to public order and therefore, the order of detention is illegal. The petitioner has, therefore, prayed that the present petition be allowed and the order of detention be quashed and set aside.

4. On receipt of the petition Rule was issued and in response to the service of notice of Rule Ms. P B Sheth learned AGP has appeared on behalf of the respondents. At the stage of final hearing, I have heard the learned

advocates for the parties and have perused the papers.

5. As said above, the petitioner has been detained in exercise of the powers u/s.3(2) of the said Act on the ground that the petitioner was involved in an activity of land grabbing. In particular, it was alleged against the petitioner that a land bearing Survey No.118 was sold as private land and an adjoining land bearing Survey No.352 was also sold with the said land showing that the entire land was a private land being Survey No.118.

6. Now, so far the aforesaid aspects are concerned, it is not much in dispute that some civil and criminal litigations have been filed and that they are pending before appropriate Courts. For this purpose, we can refer to the grounds of detention supplied by the detaining authority to the petitioner.

7. In para 4 at page 15 it has been mentioned therein that a dispute is going on between the State of Gujarat and Gobar Dharamsingh. In para 6, again the said fact has been reiterated. It has been stated therein that Gobar Dharamsingh has also filed a criminal complaint on 10/02/01 before Rajkot Taluka Police Station for offences punishable u/s.420, 406, 468, 477, 471 and 120(B) IPC.

8. Therefore, it is not much in dispute that civil and criminal litigations have been pending before the competent Courts since 2000 & 2001 respectively. In the premises, the learned advocate for the petitioner has argued at length that this is not a matter in which there would be a threat to public order. In support of the said argument, he has relied upon an unreported decision of this Court in S.C.A.No.181/1992 dated 23/04/92.

9. It would be relevant to consider that in the said matter also the petitioner was detained saying that he was a property grabber under the provisions of the said Act. While dealing with the said issue, an argument was advanced that there was no material before the detaining authority to come to a conclusion that if the petitioner had not been detained, the maintenance of public order would be breached.

10. However, it was represented on behalf of the State that the plot holders had a feeling in their minds that they were cheated and a feeling of insecurity about the property and capital which they had invested in the plots while purchasing the same from the petitioner and therefore, there was material on record to come to a

conclusion that if the petitioner was not detained, then it would come in the way of maintenance of public order.

11. In the present case also, the detaining authority has observed that because of land grabbing by the petitioner and because of the sale of government land by the petitioner, if the petitioner is not detained, then the persons who had purchased the land may be required to return the land to the government and in the process there would be a breach of public order. Again for the purpose of so observing, there appears to be no material on record of the detaining authority. Atleast such a material has not been provided to the Court. Same way such a material does not appear to have been provided to the petitioner herein in support of the order of detention.

12. Here it is not necessary or possible for this Court to observe about the merits and demerits of the said transaction. At the same time, it also becomes clear that when the parties have been at litigations since two years or more prior the date of order of detention, then in that case, it can be gathered that there was no threat to public order during the said period of two to three years and therefore, it could not be said that now there is likelihood of a threat to public order.

13. The learned AGP has argued that the case of land grabbing was not noticed by the State Government or by the officers subordinate to it in the past and therefore, there was no delay in passing the order of detention. It is a matter on record that no untoward incident had taken place on account of the alleged land grabbing activities of the present petitioner. So, on the one hand, there appears to be no material before the detaining authority to come to a finding that there was a likelihood of breach of public order and on the other hand, no untoward incident has taken place during the last two years. In that view of the matter, the order impugned in this petition cannot be sustained in the eye of law.

14. The issue of breach of public order was required to be considered by this Court in the case of Rajendra Bachubhai Rathod V/s. Commissioner of Police reported in 1997(2) GCD 217. In para 16 of the said decision, the learned Judge of this Court has observed as to what would be a disturbance to public order. It would, therefore, be relevant to refer and reproduce para 16 as follows;

Para 16. "The touch stone to test the breach of

> public order or the activities prejudicial to it, is the nature of antisocial activities exceeding the breach of law and order so as to cross the limits of criminal and unlawful activities against an individual or individuals, to militate against the public in general and community or society as a whole, adversely affecting the even tempo of the society, posing a threat to the very existence and normal and routine life of the people at large, putting the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law."

15. Applying the above principle to the facts of the case on hand, it is clear that when the parties are at civil and criminal litigations, it cannot be said that there was likelihood of violation of public order. It is more so when the litigations were going on since more than two years before the order in question was passed by the detaining authority.

16. It is required to be considered that when a detention order is passed on the ground that the person who is required to be detained is carrying out certain activities which are required to be stopped immediately, it would be necessary to detain the said person. In other words, there should be immediate need to detain the person under an order of detention.

17. In the present case, we find that having regard to the aforesaid facts and circumstances, it can not be said that there was likelihood of breach of public order by the alleged activities of land grabbing by the present petitioner.

18. It is not much in dispute that the alleged act of land grabbing in respect of Survey No.352 is a solitary act of the petitioner in this field. It is not even the case of the respondent that the petitioner has been involved in similar activities earlier also. Even subsequent to the aforesaid incident of alleged land grabbing by the petitioner, no other incident has been recorded. It therefore, cannot be said that the petitioner was in a habit of dealing with activities of land grabbing which would affect people at large.

19. In above view of the matter, I am of the view that the alleged land grabbing activity of the petitioner would not amount to a threat to public order and therefore, the detaining authority had no justification

in passing an order of detention against the petitioner. On this count, the detention order is required to be held to be illegal and consequently, it is required to be quashed and set aside. In view of the aforesaid discussions, this petition is required to be allowed.

20. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 25/09/03 passed by respondent no.1 against the ordered to be quashed and set aside. Detenu, Valjibhai Haribhai Rokad, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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